



July 18, 2013

VIA E-MAIL TO eircomments@mtc.ca.gov AND info@onebayarea.org

Commission Chairperson Amy Worth and Commission Members
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607

Executive Board President Mark Luce and Executive Board Members
Association of Bay Area Governments
101 Eighth Street
Oakland, CA 94607

**Re: July 18, 2013 Special Joint Meeting of MTC Commission and ABAG
Executive Board -- Comments on Agenda Item 5.b (*Final Environmental
Impact Report, MTC Resolution No. 4110 and ABAG Resolution No. 05-13*)
and Agenda Item 5.c (*Final Plan Bay Area, MTC Resolution No. 4111 and
ABAG Resolution No. 06-13*)**

Dear MTC Chairperson Worth, ABAG Executive Board President Luce, MTC Commission Members, and ABAG Executive Board Members:

Cargill, Incorporated ("Cargill") submits these written comments in lieu of oral testimony at the July 18, 2013 Special Joint Meeting of the MTC Commission and ABAG Executive Board, on the agenda items concerning Plan Bay Area (the "Plan") and the related environmental impact report ("EIR") prepared pursuant to the California Environmental Quality (CEQA).

Because Cargill and its predecessor have a long history in the San Francisco Bay Area, we appreciate the significant efforts made by MTC and ABAG in developing Plan Bay Area, and we thank MTC and ABAG for providing Cargill with the opportunity to participate in that process and in the public review of the related EIR. Cargill's participation has been focused on ensuring factual accuracy in the Plan and in the environmental review process,

and to allow for informed decision making by the public, MTC/ABAG, and local government agencies that may review and/or rely on these documents in the future.

Enclosed with this letter is a copy of Cargill's May 16, 2013 letter that provided MTC and ABAG with a number of specific comments on the original drafts of Plan Bay Area and the draft EIR previously circulated for public comment. These comments, incorporated here by reference, focused on how the Plan and the EIR inaccurately, ambiguously, and inconsistently characterize and designate properties, including Cargill's privately owned lands, in relation to "protected open space," "urban growth boundaries," and/or "priority conservation areas."

Cargill understands that MTC and ABAG will be considering potential revisions to the Plan at the July 18 meeting, in conjunction with approval of the Plan and certification of the final EIR. To the extent that the versions of the Plan and EIR ultimately approved by MTC and ABAG fail to accurately characterize the nature of Cargill's private land holdings, Cargill respectfully reserves its right to pursue all legal remedies necessary to protect its vested property rights and other rights and interests as a landowner.

Thank you again for the opportunity to participate in this important process. Should you have any questions regarding any of the comments contained in this letter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Paul Shepherd". The signature is written in a cursive, flowing style.

Paul Shepherd
Cargill, Incorporated

Enclosure: May 16, 2013 Cargill letter



May 16, 2013

VIA E-MAIL AND HAND DELIVERY

Carolyn Clevenger, MTC EIR Project Manager
Metropolitan Transportation Commission
Plan Bay Area Public Comment
101 Eighth Street, Oakland, CA 94607

eircomments@mtc.ca.gov
info@onebayarea.org

**Re: Comments on March 2013 Draft Plan Bay Area and
April 2013 Draft Environmental Impact Report for Draft Plan Bay Area**

Thank you for the opportunity to comment on the March 2013 Draft Plan Bay Area ("Plan") and the April 2013 Draft Environmental Impact Report ("EIR") prepared by the Association of Bay Area Governments (ABAG) and Metropolitan Transportation Commission (MTC) pursuant to the California Environmental Quality (CEQA).

Cargill, Incorporated ("Cargill") and its predecessor have a long history in the San Francisco Bay Area, and we are very thankful and appreciative of that. To ensure factual accuracy in the Plan and in the environmental review process, and to serve CEQA's goal of informed decision making by the public, ABAG/MTC, and local government agencies that may review and/or rely on these documents in the future, we request that the Plan and EIR be revised to take into account the following comments.

I. Comments Applicable to Both the Draft Plan Bay Area and the Draft EIR

A. The Plan's "Protected Open Space" Designation is Undefined and Misleading

The designation of "Protected Open Space" appears in several of the land use maps included in the Plan and EIR¹ and is central to the EIR's analysis of potential impacts and proposed mitigation measures, particularly relating to Land Use and Development, associated

¹ See, e.g., Plan at 45 ("Map 1 SF Bay Area Resource Lands"), Plan Appendix 2: Maps 1-3 at 140-142; EIR at 2.3-3 ("Figure 2.3-1 Urbanized Land and Open Space"), 2.3-17 ("Figure 2.3-4 Regional Parks and Open Space").

with the proposed Plan.² However, despite being an apparently key land use designation in both the Plan and the EIR, “Protected Open Space” is undefined in both documents. Without a clear definition, the term “Protected Open Space” may be interpreted as a land use designation akin to “preservation”—i.e. where development and/or certain types of land use are precluded or severely restricted—even if local land use controls do not impose such restrictions. This is particularly problematic for a landowner such as Cargill, whose private property appears to be depicted in the Plan, and analyzed in the EIR, as “Protected Open Space.” This designation improperly suggests to the public and decision makers that certain types of land uses that are currently allowed at these sites, or that may be allowed in the future by the local government(s) with jurisdiction over the sites, are actually barred or restricted in some way by the “Protected Open Space” designation in this Plan.

Arguably, the most informative discussion of the term “Protected Open Space” appears in a footnote in the Alternatives discussion of the EIR: “Protected open space includes lands protected primarily as open space by an ownership interest of a governmental agency or non-profit organization (fee or easement). These lands may or may not offer public access.” Draft EIR at 3.1-51 FN 6. However, it is entirely unclear whether this statement is intended to describe a subset of the lands identified in the Plan as “Protected Open Space,” or instead to describe all such lands. If the former, nowhere do the Plan or the EIR identify the other types of lands at issue. If the latter, it is clearly incorrect, as Cargill properties appear to be designated as “Protected Open Space” in the Plan, but certainly do not fall within the EIR’s description. In addition, the EIR introduces further confusion by conflating “Protected Open Space” with “permanent open space”: “The agricultural lands and open space analysis identifies factors affecting development impacts at the county level and determines whether the proposed Plan would affect the relative ability of local jurisdictions to protect agriculture and **open space designated as ‘permanent.’**” Draft EIR at 2.3-34 (emphasis added).

Finally, the source of information for the “Protected Open Space” designation is not clear. Cargill has reviewed the geographic dataset which it understands to be the source of information for the “Protected Open Space” designation, *California’s Protected Areas Database* (“CPAD”).³ The properties owned by Cargill in Redwood City and Newark, which appear to be

² See, e.g., EIR at 2.3-52 (“Mitigation Measures ... 2.3(h) ... Requiring project relocation or corridor realignment, where feasible, to avoid protected open space. ... Requiring conservation easements on land at least equal in quality and size as partial compensation for the direct loss of protected open space.”), 2.3-35, 2.3-46, 2.3-50, 2.3-51, 2.3-52, 3.1-51, and 3.1-52.

³ Plan Maps 1 “SF Bay Area Resource Lands” and Appendix 2 Maps 1-3 do not specify the source of information for the “Protected Open Space Designation.” Plan at 45, 140-142. However, EIR Figures 2.3-1 and 2.3-4 indicate one of the data sources as The Bay Area Protected Areas Database, Bay Area Open Space Council, which is available to view at <http://www.calands.org/map>.

depicted in the Plan's maps as "Protected Open Space," are not designated as such in the CPAD database.⁴ Nor are those properties designated as "Protected Open Space" in the general plans or zoning ordinances of the relevant local governments.

In sum, the Plan and EIR fail to provide a coherent definition of the "Protected Open Space" designation and fail to provide a factual basis for its use over large portions of the Bay Area, including over Cargill lands. As a result, the "Protected Open Space" designation is incomprehensible and, ultimately, misleading. Moreover, neither the Draft Plan nor the Draft EIR explain how this designation is intended to influence local government regulation of land, meaning that the public and decision-makers cannot understand the implications of this designation for current and future uses of the properties at issue. The Plan and EIR must provide a clear definition of "Protected Open Space," a complete explanation as to the source of information used to map this designation in the Plan and EIR, and a detailed analysis of how the designation will or may affect local regulation of designated lands. To the extent "Protected Open Space" is defined in a manner that suggests ABAG and MTC are imposing or identifying a "preservation" or "dedicated open space" land use restriction that does not exist and is inconsistent with underlying local land use designations -- which ABAG and MTC have no authority to impose or alter -- it will create a false impression of land use restrictions applicable to a particular site. Application of such a misleading designation to Cargill's lands could constitute a substantial impairment of Cargill's property rights that is not authorized by local, state, or federal law.

B. The "Protected Open Space" Designation is Inconsistently Applied

The ambiguity in the Plan and EIR created by the absence of a clear definition of "Protected Open Space" is compounded by inconsistencies in the depiction of this land use designation in different maps within the Plan, between the Plan and EIR, and between the Plan and other documents which it purportedly incorporates.

First, the Plan is internally inconsistent in its designation of "Protected Open Space." For example, the figure entitled "San Francisco Bay Area: Transportation and Land Uses," which appears immediately following the table of contents and prior to page 1 of the Plan, depicts "Open space" as opposed to "Protected Open Space." Some of the lands that are designated as "Protected Open Space" in Plan Map 1 ("SF Bay Area Resource Lands") and Plan Appendix Maps 2 and 3 are not designated as "Open space" in this map.⁵ Although the term "Open space"

⁴ Compare Plan at 45 ("Map 1 SF Bay Area Resource Lands), Plan Appendix 2 ("Map 2 Northeast and Central Bay: Resource Lands" and "Map 3 South and West Bay: Resource Lands") with same geographic area on map at <http://www.calands.org/>.

⁵ Compare, e.g., the depiction of Newark and Fremont in this figure with their depiction in Plan Map 1 at 45 and Maps 2-3 in Appendix 2 at 141-142.

is undefined, presumably “Protected Open Space” would be encompassed within the apparently more general “Open space” designation but this is not true based on a comparison of these maps. Either the “Open space” depicted in this figure somehow excludes certain “Protected Open Space”, or inconsistent data sets were used to create these maps.

There are also discrepancies between certain maps in the Plan and those in the EIR with respect to the “Protected Open Space” designation. For example, designations of “Protected Open Space” in Redwood City and Newark in Plan Map 1 “SF Bay Area Resource Lands” and Maps 2 and 3 of the Plan’s Appendix 2 are inconsistent with the depiction of “Protected Open Space” in Figures 2.3-1 and 2.3-4 of the EIR.⁶

Finally, the May 2012 *Jobs-Housing Connection Strategy*, which is incorporated by reference into the Plan and EIR⁷, includes maps differentiating between “Protected Open Space,” “Policy Protected Open Space,” and “Conservation Easement[s].” Unfortunately, these terms are also undefined in the *Jobs-Housing Connection Strategy*, but it appears, at least with respect to the “Protected Open Space” designation, there are inconsistencies between the maps included in the May 2012 *Jobs-Housing Connection Strategy* and those contained in the Plan.⁸

As shown above, the Plan and EIR contain conflicting information relating to the “Protected Open Space” designation and are, as a result, individually misleading and collectively incoherent. The depiction of “Protected Open Space” in both of these documents must be corrected to not only accurately reflect the definition of that term, however the term is ultimately defined in the Plan, but also to ensure that the designation is depicted consistently in maps throughout both documents and is not inconsistent with source documents that are incorporated by reference. To the extent these inconsistencies are not corrected, and to the extent Cargill’s property is improperly designated as “Protected Open Space” on any of the figures contained in the Plan and/or EIR, as described above, the Plan could substantially impair Cargill’s property rights in a manner that is not authorized by local, state, or federal law.

C. The Plan’s “Urban Growth Boundary” Designation is Ambiguous and Confusing

As with the “Protected Open Space” designation, the Plan’s “Urban Growth Boundary” designation requires clarification. The basis for the “Urban Growth Boundary” designation, as

⁶ Plan at 45, 141-142, Draft EIR at 2.3-3 and 2.3-17.

⁷ Plan at 26; EIR at ES-8.

⁸ Compare, e.g., Plan at Appendix 2, “Map 2 Northeast and Central Bay: Resource Lands” showing the southern portion Newark as “Protected Open Space” that is not depicted as such in the map included in the Appendix C of the *Jobs-Housing Connection Strategy, Appendix*, in the map entitled “Place Type for Priority Development Areas in Alameda County.”

depicted in various figures throughout the Plan and the EIR, should be clearly defined in both documents.⁹ Instead, the Plan indirectly describes the term as follows:

To ensure that the Bay Area retains the landscapes that its residents value so highly, the Plan Bay Area aims to protect open space and agricultural land by directing 100 percent of the region's growth inside the year 2010 urban footprint, which means that all growth occurs as infill development or within established urban growth boundaries or urban limit lines. As the draft plan assumes that all urban growth boundaries/urban limit lines are held fixed through the year 2040, no sprawl-style development is expected to occur on the region's scenic or agricultural lands. This will help preserve the natural beauty of the Bay Area for future generations to enjoy.

Plan at 101. Similarly, the EIR refers to "Urban Growth Boundaries" as one type of local land use measure employed to limit sprawl:

With the exception of San Francisco, all counties in the Bay Area protect open space and agricultural lands by county-wide land use measures, such as urban service areas, environmental corridors, slope/density restrictions, stream conservation areas, or riparian buffers. Additionally, some cities have Urban Growth Boundaries (UGB) to limit sprawl and protect agricultural land. Generally, this means that if a project falls outside a UGB, there are regulatory measures in place to aid local jurisdictions in farmland protection. Still, there are many communities without growth limits in place, and those that do exist vary in quality, effectiveness, and enforcement. According to MTC/ABAG, of 101 Bay Area municipalities, 27 have UGBs as of January 2013. Additionally, countywide growth boundaries in Contra Costa and San Mateo counties apply to all cities within their jurisdiction. Counties and cities with measures protecting open space are summarized in **Table 2.3-14**.

EIR at 2.3-47. These descriptions do nothing to clarify either (1) the underlying factual basis for the single "Urban Growth Boundary" depicted in the Plan and EIR, or (2) what the term actually means in the context of implementation of the Plan and/or environmental impact analysis in the EIR.

Although not clear in the Plan or EIR, the basis for the Plan's "Urban Growth Boundary" could be buried in one of the "Supplementary Reports and Additional Resources" listed in Appendix 1 of the Plan. It is unreasonable to expect that the public would be able to canvass all of these materials in the short time that ABAG and MTC has made available for public review and comment of the Plan and EIR, and, in fact, Cargill has not been able to complete such a comprehensive review. However, Cargill has determined that the *Draft Summary of Predicted Land Use Responses* ("*Draft Summary*") contains a discussion of "Urban Boundary Lines,"

⁹ See, e.g. Plan at 52 ("Map 4 SF Bay Area Household Intensities, 2010-2040") and Plan Appendix 2 Maps 1-15.

although it is not clear whether that description of the “Urban Boundary Lines” is the basis for the Plan’s “Urban Growth Boundary.” As described at page 24 of the *Draft Summary*, “[f]or the purpose of building EIR Alternatives, a consistent set of ‘Urban Boundary Lines’ surrounding each city was established. *These are meant to function like urban growth boundaries in the EIR Alternatives that stress the implementation of regional urban growth boundaries*” (emphasis added).

Assuming this description of “Urban Boundary Lines” is the source for the “Urban Growth Boundary” described in the Plan and the Draft EIR, the designation apparently reflects a composite of various local land use designations, such that it is not readily apparent what the designation actually means for any particular parcel:

In some cases, the Urban Boundary Lines are drawn from true urban growth boundaries or urban limit lines. In other cases urban service lines that function much like urban growth boundaries are used. In some cases, cities have established no such lines. However, adjacent unincorporated county land is zoned to limit development and preserve agricultural and natural resource lands. In these areas, the current spheres of influence are used establish the Urban Boundary Line for EIR analysis.

Draft Summary at 24. Further, the caption of Figure 10 in the *Draft Summary* states that “Growth boundaries are defined by a city or county, where areas inside the boundary are intended for development and the area outside are for minimal lower density or no development.” *Draft Summary* at 25, Figure 10: “Urban Boundary Lines Across the Alternatives.” It is unclear whether this description of “growth boundaries” is consistent with explanation of “Urban Boundary Lines” in the preceding excerpt. Moreover, it is unclear whether any of these definitions apply to the “Urban Growth Boundary” depicted in the Plan and EIR.

The *Draft Summary* also describes how “Urban Boundary Lines” are treated differently across the alternatives analysis in the EIR, suggesting an improper factual basis for the impact analysis, particularly to the extent it relies on assumptions regarding local land use decisions over which the Plan has no authority:

The Urban Boundary Lines are treated two different ways across EIR Alternatives. In the No Project Alternative they are assumed to be weakly enforced meaning that some suburban growth will be allowed to spill out past them. In the other four alternatives, the enforcement is assumed to be strict meaning that all Urban Boundary Lines are strictly enforced as urban growth boundaries and suburban growth is not allowed beyond them. In all Alternatives, low density rural residential growth is permitted beyond the Urban Boundary Line in locations where the base year zoning allows it. [*Draft Summary* at 24]

As currently drafted, the Plan and EIR lack a clear definition of the “Urban Growth Boundary” designation and fail to specify the source of the information for this designation. The

Plan and EIR must clarify whether the “Urban Growth Boundary” reflects actual local land use restrictions, whether the designation is instead an amalgam of various types of local land use restrictions compiled by the authors of the Plan, or whether it is based on some other source of information altogether. To the extent the Plan and/or EIR depict Cargill’s property as being impacted by any purported “Urban Growth Boundary” that does not actually exist at the local level, the Plan could substantially impair Cargill’s property rights in a manner that is not authorized by local, state, or federal law. Moreover, to the extent the EIR’s impact analysis relating to the “Urban Growth Boundary” is based on the “Urban Boundary Lines” as described in the *Draft Summary*, the EIR must clarify this disparate terminology.

D. The Relationship Between the “Protected Open Space” and “Urban Growth Boundary” Designations is Unclear

In addition to a lack of clarity in the definitions and sources of information for the “Protected Open Space” and “Urban Growth Boundary” designations, the Plan and EIR fail to explain how these two designations interrelate. Specifically, what does it mean if a parcel is designated as both “Protected Open Space” and within the “Urban Growth Boundary”?¹⁰ It is not clear whether the “Protected Open Space” designation somehow “trumps” the identification of a parcel as lying within the “Urban Growth Boundary,” or vice versa, or if there are other unstated assumptions underlying such a “dual designation.” This absence of key information, combined with the fact that it is not clear what is intended by either of these designations (as explained in detail above), renders it impossible for the public and decision makers to evaluate what it means if both designations apply to a site. To the extent those terms fail to accurately reflect existing local land use designations, the Plan could substantially impair Cargill’s property rights in a manner that is not authorized by local, state, or federal law.

E. The Plan Lacks an Adequate Description of the Locations and Extent of the “Priority Conservation Areas”

Priority Conservation Areas (PCAs) are described in the EIR as “compris[ing] over 100 regionally significant open spaces for which there exists broad consensus for long-term protection but face nearer-term development pressure. The PCAs designated in the proposed Plan will expand a regional greenbelt dedicated for preservation or protected by federal, state, and local policies. PCAs play a particularly important role in implementing the growth strategy in the North Bay—where they are central to the character and economy of many communities.”¹¹

¹⁰ See, e.g. Plan at Appendix 2 Maps 3 and 6. Some areas depicted as “Protected Open Space” in Map 3, apparently overlying the “Urban Growth Boundary” designation (for example lands near Redwood City, Menlo Park, Newark and Union City), are depicted as lying within the “Urban Growth Boundary” in Map 6.

¹¹ EIR at 1.2-26. See also Plan at 43.

However, other than appearing as dots on a regional map (see, for example, Plan Map 1), the Plan and EIR contain no identification or description of the locations and geographic extent of each PCA. Without such information, the Plan and EIR provide no basis for evaluating the impact or extent of the PCAs, including whether the PCAs overlap lands designated as “Protected Open Space” or “Urbanized Areas” in the Plan.

In addition, according to the “FOCUS” website, only 98 PCAs were adopted by the ABAG Executive Board in July 2008 from over 100 nominated areas.¹² If 98 is in fact the correct number of PCAs actually adopted by ABAG, rather than over 100 as stated in the Plan and EIR, the documents should be revised to reflect this inaccuracy, in addition to providing an adequate description of the locations and extent of each PCA.

II. Comments Specific to the Draft EIR

A. The Incomplete Information and Inconsistencies Described Above Render the EIR an Inadequate Informational Document Under CEQA

Because of the deficiencies identified above, the EIR fails to fulfill its fundamental role under CEQA as an informational document that informs public agency decision-makers and the public of environmental effects associated with the proposed Plan. 14 Cal Code Regs. §15121. Because the key terms “Protected Open Space” and “Urban Growth Boundary” lack any clear definition, there is no way for the public maker or decision-maker to understand exactly what is being proposed or analyzed in the Plan as it pertains to lands covered by either or both of these designations. Without clear definitions of these key designations, including an explanation of how the designations related to one another, the EIR fails to provide an adequate basis for the public and decision-makers to evaluate the Plan. It is therefore inadequate under CEQA.

B. Land Use Impact Analysis and Mitigation Not Supported by Substantial Evidence

Because the term “Protected Open Space” is undefined in the Plan and EIR, the impact analyses relating to lands falling under this designation are not supported by substantial evidence as required under CEQA. For example, the EIR maintains a finding of a less than significant impact with no mitigation required for Impact 2.3-3, “Implementation of the proposed Plan could conflict substantially with the land use portion of adopted local general plans or other applicable land use plans, including specific plans, existing zoning, or regional plans such as coastal plans or the Bay Plan.” EIR at 2.3-42—2.3-44. However, without an adequate definition of “Protected Open Space,” it is impossible to assess whether the Plan conflicts with local land use designations, zoning restrictions, and other land use controls. Moreover, if the EIR is based on an erroneous assumption regarding the term “Protected Open Space”—i.e. that development is currently precluded on those parcels when in fact it is not—this would render the analysis inadequate because it would be based on faulty factual information.

¹² <http://www.bayareavision.org/pca/>.

Similarly, portions of mitigation measure 2.3(h)—“Requiring project relocation or corridor realignment, where feasible, to avoid protected open space” and “Requiring conservation easements on land at least equal in quality and size as partial compensation for the direct loss of open space”—are infeasible because meaningless, absent a clear understanding of what “protected open space” means within this Plan.¹³

In sum, the absence of a clear and cohesive definition of “Protected Open Space” renders any impact analysis that relies on this designation virtually meaningless and fails to comport with CEQA’s requirement that it be supported by substantial evidence.

III. To the Extent ABAG/MTC Fail to Correct These Deficiencies, Cargill Reserves its Right to Pursue All Legal Remedies Necessary to Protect its Interests

The designation of Cargill lands as “Protected Open Space” in the Plan may mislead the public and decision makers by suggesting the existence of significant restrictions on the current and future use of those properties, despite the fact that no such restrictions exist. Moreover, regulatory agencies and local jurisdictions evaluating future uses of these properties may believe they are under an obligation to view the designation in this light. To the extent the Plan is interpreted as “regulat[ing] the use of land” or could be “interpreted as superseding the exercise of land use authority of cities and counties within the region,” it runs contrary to the authorizing legislation of SB 375 and would be legally invalid.¹⁴

MTC and ABAG should not adopt the Plan or certify the EIR so long as those documents improperly and misleadingly identify and analyze Cargill’s property as designated “Protected Open Space” and/or as impacted by any purported “Urban Growth Boundary” depicted in the Plan. For this reason, Cargill requests that MTC and ABAG: (1) define the “Protected Open Space” designation to include only those land use restrictions currently imposed by local regulation on a particular parcel, and include on the map only parcels currently subject to such restrictions, (2) clarify that the “Urban Growth Boundary” described in the Plan and EIR is not intended to reflect anything other than locally designated urban growth boundaries and remove it from the maps where none actually exists, and (3) clearly state that the Plan’s designation and

¹³ EIR at 2.3-52.

¹⁴ “Neither a sustainable communities strategy nor an alternative planning strategy regulates the use of land, Nothing in the sustainable communities strategy shall be interpreted as superseding the exercise of the land use authority of cities and counties within the region. . . . Nothing in this section shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law. Nothing in this section shall require a city’s or county’s land use policies and regulations, including its general plan, to be consistent with the regional transportation plan or alternative planning strategy.” Cal. Gov. Code § 65080(b)(2)(J).

depiction of "Protected Open Space" and an "Urban Growth Boundary" does not impose any additional land use restrictions, and does not imply that any additional restrictions should or will be adopted in the future by MTC and ABAG -- who lack such regulatory authority -- or by the local governments that do have regulatory authority over the properties in question. In other words, the maps should not impose or suggest -- directly or indirectly -- any restriction on current or future use of a given parcel that is not supported by existing designations by a local agency with jurisdiction over that specific property.

MTC and ABAG must define the terms "Protected Open Space" and "Urban Growth Boundary" to reflect only actual local land use designations and regulations currently in place, and the maps must only include in such designations parcels legally subject to such designations. In addition, regardless of how "Protected Open Space" and "Urban Growth Boundary" are defined, there are clear implications to these terms as presented on the Plan maps and in the draft EIR: namely, that current or future land uses are somehow limited or restricted. Where these implications are inaccurate because they are not an accurate reflection and characterization of the governing documents of the respective jurisdictional authorities, it is inappropriate to apply these designations. As such, these designations must be removed from all property where there is no factual basis to support them, as would be the case with Cargill's properties. Should MTC and ABAG fail to take such action, the Plan could substantially impair Cargill's property rights in a manner that is not authorized by SB 375 or any other local, state, or federal law. Cargill reserves its right to pursue all legal remedies necessary to protect its interests as a landowner, including its vested property rights and its right to challenge an uncompensated taking of private property.

Thank you again for the opportunity to comment on the Plan and EIR. Should you have any questions regarding any of the comments contained in this letter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Paul Shepherd".

Paul Shepherd
Cargill, Incorporated